

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MOSCOW

INFO AMCONSUL LENINGRAD

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E.O. 11652' N/A

TAGS: CGEN, CSCE, PFOR, UR, US

SUBJECT: CONSULAR REVIEW - IMMUNITIES

REF: A. STATE 265002, B. MOSCOW 5732, C. STATE 86235

1. IF MFA PURSUES IMMUNITY QUESTION IN CONSULAR REVIEW, YOU MAY SAY THAT DEPARTMENT IS AWARE THAT IMMUNITIES ACCORDED UNDER 1968 EXCHANGE OF NOTES ARE NOT FULLY RECIPROCAL. THIS ARRANGEMENT WAS REQUIRED BECAUSE THERE WAS NO EXISTING AUTHORITY UNDER US LAW TO EXTEND ADDITIONAL IMMUNITIES TO FAMILY MEMBERS OF ADMINISTRATIVE AND TECHNICAL STAFF. THE LEGAL SITUATION HAS CHANGED SOMEWHAT SINCE THAT TIME AS A RESULT OF THE RATIFICATION BY THE US IN 1972 OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS. UNDER THAT CONVENTION, FAMILY MEMBERS OF ADMINISTRATIVE AND TECHNICAL STAFF OF DIPLOMATIC MISSIONS RECEIVE FULL IMMUNITY FROM CRIMINAL JURISDICTION. (SEE ARTICLES 31 AND 37 OF

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THE VIENNA CONVENTION.)

2. US LAW HAS NOT RPT NOT BEEN CHANGED TO THE EXTENT NECESSARY TO ACCORD THE SCOPE OF IMMUNITY TO FAMILY MEMBERS OF ADMINISTRATIVE AND TECHNICAL STAFF CORRESPONDING TO THAT ACCORDED TO SUCH PERSONS BY THE USSR. A LEGISLATIVE PROPOSAL GIVING THE PRESIDENT AUTHORITY TO DO SO HAS BEEN

INTRODUCED IN THE LAST SEVERAL CONGRESSES; HOWEVER, IT HAS NEVER RECEIVED ENOUGH SUPPORT TO SECURE PASSAGE. DURING THE LAST SESSION, FOR THE FIRST TIME, CONSIDERABLE INTEREST WAS SHOWN IN THIS STATE DEPARTMENT-PROPOSED MEASURE ON THE HOUSE SIDE (TRADITIONALLY THE BILL'S BURIAL GROUND). FOR THIS REASON, THE DEPARTMENT IS CONFIDENT THAT SERIOUS CONSIDERATION WILL BE GIVEN TO PASSAGE DURING THE NEXT SESSION.

3. WHILE THE DEPARTMENT WILL PROBABLY INTRODUCE THE SAME OR A SIMILAR BILL IN THE NEW CONGRESS, THERE IS NO GUARANTEE THAT THE PROVISION GIVING THE EXECUTIVE ADDITIONAL AUTHORITY TO EXTEND PRIVILEGES AND IMMUNITIES WILL BE ADOPTED. IT IS QUITE POSSIBLE THAT ONLY THE SECTION OF THE BILL DEALING WITH REPEAL OF THE 1790 FEDERAL IMMUNITIES STATUTE WILL SURVIVE AND BE ACTED ON (22 USC 252-254).

4. WHILE EMBASSY MAY WISH TO PROVIDE ABOVE INFORMATION TO MFA FOR PURPOSE OF ADVISING ON POSSIBILITIES FOR ALTERING IMMUNITIES PICTURE, IT MAY ALSO WISH TO STRESS THAT ONLY CERTAIN WAY OF AMENDING 1968 AGREEMENT AT THIS TIME TO EXTEND RECIPROCAL IMMUNITY TO FAMILY MEMBERS OF SOVIET ADMINISTRATIVE-TECHNICAL PERSONNEL WOULD BE THROUGH A TREATY SUBJECT TO SENATE ADVICE AND CONSENT. WE WOULD NOT WISH TO CONSIDER THE POSSIBILITY OF AGREEING TO OPEN NEGOTIATIONS FOR SUCH A TREATY UNTIL WE SEE WHETHER THE PROPOSED LEGISLATION DESCRIBED ABOVE IS ENACTED. KISSINGER

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